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In This Issue

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Los Angeles
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VOL. 26 NOVEMBER, 1950 No. 3

THE PRESIDENT'S PAGE

THE 1950 STATE BAR CONVENTION:

Dana Latham

The Twenty-third Annual Convention of the State Bar of California, just concluded, was undoubtedly a great success. All who attended know that the Los Angeles Bar Association and its members played no small part in making the Convention the success that it was.

We as an organization would certainly be amiss if we did not thank publicly those persons who for a period of months have given so generously of their time and effort.

Our participation in the entertainment activities, including the raising of the necessary funds, was in charge of a general committee appointed many months ago and composed of the following:

Joseph A. Ball	Richard H. Graham
Robert M. Barton	Lawrence J. Larson
William B. Cleves	Hugh Macneil
George W. Cohen	Hon. Julius V. Patrosso
Joseph Crider, Jr.	John P. Pollock
Robert H. Dunlap	William G. Robertson
Stevens Fargo	Donn B. Tatum
Gordon L. Files	J. Sharp Whitmore
Paul Fussell	Loyd Wright, Jr.
Martin Gang	William P. Gray, *Chairman*

This general committee was divided into various subcommittees, each charged with a particular task.

Finances:

Paul Fussell chairmaned this very important committee, receiving particular assistance from Joe Crider and, in addition, from every member of the general committee.

Cocktail Party for the Conference Of Bar Delegates:

Robert M. Barton was the chairman of this subcommittee, which was composed of Gordon Files and Stevens Fargo. This committee was in turn assisted by a special group selected from the Los Angeles Bar delegates and composed of Charles E. Beardsley, Warren H. Biscailuz, Hugh Darling, Katherine Hall, Harold S. Voegelin, and John S. Welch.

The two groups just mentioned were in turn assisted by members of our Junior Barristers Committee, who did yeoman service in serving our guests at the party. This group consisted of Richard F. Alden, William F. Clements, James E. Dunlay, Jackson A. Jordan and Ira M. Price.

The Bar Delegates cocktail party would not have been possible without the splendid cooperation of the Pacific Mutual Life Insurance Company through its President, Asa V. Call, its Secretary, Lyman Robertson, and its General Counsel, George Gose. The company made available to us without cost, as a place to hold the party, its entire lunch room on the second floor of its local building.

Fashion Show for the Ladies:

This show which was an unqualified success was in charge of Hugh Macneil. Loyd Wright, Jr. rendered great assistance in making the necessary arrangements with Saks Fifth Avenue and Cole of California. Jack Mathes, Manager of Saks Fifth Avenue, and Fred Cole went "all out" in arranging and presenting the show.

General Cocktail Party at Hollywood Park:

I am sure all will agree that this was the outstanding social event of the Convention. Although no accurate check was possible, we are informed that almost five thousand persons were in attendance. Loyd Wright, Jr., is entitled to much of the credit for the success of this event. He had at all times the wholehearted cooperation of J. F. McKenzie, Vice-President and General Manager of the Hollywood Turf Club; Harry Kurland, exclusive caterer for the Club, and the manager of the latter's service, Joe Williams.

The Turf Club made their splendid facilities available to us without charge except for a very nominal clean-up cost. We are indebted to Willard W. Keith, the President of the Turf Club,

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PLEADING AND PRACTICE IN WATER CASES

By Kenneth K. Wright*

Kenneth K. Wright

THE continued overdraft upon the underground water supplies in Southern California has created a condition where attorneys are apt to be called upon to protect the interests of their clients in and to those supplies. The recent decision of the Supreme Court in the case of *Pasadena v. Alhambra*[1] not only determined the vexing problems with respect to conflicting rights in and to common sources of supply but also approved the reference procedure under which basinwide adjudications may be had where the rights of each party may be determined not only as between the plaintiff or plaintiffs and the several defendants, but also as between the defendants themselves. The case is also interesting in that it approved a solution of water supply problems evolved by the parties and approved by the trial court.

In the following discussion, the case of *Pasadena v. Alhambra* will be referred to as the *Pasadena* case. The term "producer" will refer to those who take water irrespective of the right under which or the means by which it may be taken.

Prior to the *Pasadena* decision the various cases involving underground waters had arisen only between certain producers from a common supply and had not involved the rights of all producers therefrom. The case of *San Bernardino v. Riverside*[2] indicated clearly the limitations upon the power of the court with reference to piecemeal adjudications, and the desirability of having complete adjudications was pointed out in the case of *Meridian Ltd. v. San Francisco*.[3] However, as we have noted, such a proceeding with respect to underground water was not attempted until the *Pasadena* case.

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*Mr. Wright of the Los Angeles bar is a member of our Association, of the American Bar Association and the Chancery Club. L.L.B., U.S.C. Law School (1925).

[1]33 Cal. (2d) 908, 207 P. (2d) 17.

[2]186 Cal. 7, 198 P. 784.

[3]13 Cal. (2d) 424, 457, 90 P. (2d) 537.

THE NATURE OF WATER RIGHTS

Rights to water in California are riparian, overlying, or appropriative.[4]

The riparian right attaches to property which borders upon a surface or underground stream. The right is correlative with respect to other riparian owners, and the riparian owner has the right to a reasonable use of the customary flow of the stream upon riparian property within the water shed of the stream. If any portion of the riparian property is severed by transfer from riparian contact or from the land which has such contact, the right is lost for all time even though the land later is held in common ownership with that bordering upon the stream.[5]

The overlying right is the right of the owner to make reasonable use of water upon his property "overlying" the source of supply.[6] This right, too, is correlative with respect to other owners. Where there is insufficient water to supply the needs of all, then under either the riparian or the overlying doctrine it must be shared equitably with the other riparian or overlying owners.[7] Both the riparian right and the overlying right are part and parcel of the land to which it attaches and cannot exist independently of the land.

The appropriative right is a right which arises by reason of the taking of water from either a stream or an underground supply and putting it to beneficial use, and the amount put to beneficial use measures the right. Since 1913 when the Water Commission Act was adopted, appropriations from streams can only be made by filing an application, originally with the Water Commission, now with the Division of Water Resources, and securing a permit for such appropriation. Any taking of waters without compliance with the statute vests no right in the would-be appropriator.[9] There is, however, no statutory method for the appropriation of water from underground basins. The appropriation is made by the taking of water and putting the same to beneficial use.

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[4]There is also the unique pueblo right of the City of Los Angeles and of the City of San Diego, but being of special and local import is beyond the scope of this article. Those interested may refer to *Los Angeles v. Glendale*, 23 Cal. (2d) 68, 142 P. (2d) 289 and *San Diego v. Cuyamaca Water Co.*, 209 Cal. 105, 287 P. 475 for a definition of the right and for the cases developing and expounding the principles upon which it is based.

[5]*Rancho Santa Margarita v. Vail*, 11 Cal. (2d) 501, 528, 529, 81 P. (2d) 533.

[6]*San Bernardino v. Riverside, supra*, 186 Cal. p. 15.

[7]*Burr v. Maclay Rancho Water Co.*, 154 Cal. 428, 438, 98 P. 784; *Prather v. Hoberg*, 24 Cal. (2d) 549, 558-562, 150 P. (2d) 405.

[8]*Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist.*, 3 Cal. (2d) 489, 547, 45 P. (2d) 972.

[9]*Crane v. Stevinson*, 5 Cal. (2d) 387, 398, 54 P. (2d) 1100.

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DATE LINE A. D. 2000, OR WHAT WILL HAPPEN TO THE PRACTICE OF LAW IN THE NEXT FIFTY YEARS?

PART III.

By George Harnagel, Jr.*

THE LAW STUDENT

George Harnagel, Jr.

It is hard to believe that as recently as fifty years ago the maximum, not the minimum, standard for admission to the bar was a bachelor of arts degree followed by three years of law school. We are so accustomed to the four year law school course, plus the usual two years rotating internship, that we are inclined to forget the low standards that prevailed at mid-century.

To the traditional law school curriculum there have since then been added many other subjects including lower and higher accountancy, forensic chemistry, public speaking and spelling.

While the period of preparation has become progressively longer some relief has been secured by the law student through improved techniques in educational hypnosis and subconscious sleep-learning. With the former many students are able to memorize prodigiously while the latter, utilizing wire recordings of case book and treatise, together with pillow microphones, is indispensable for day to day preparation. Some unfortunate youths, although extremely gifted in many ways, flunk out of law school just because they cannot

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EDITOR'S NOTE: *In the year 2,000 the* BULLETIN *will publish a survey of the progress of the law and its practice during the second half of the twentieth century. For the convenience of a number of our subscribers who may not be readily available at that time, the* BULLETIN *has been publishing preliminary drafts of portions of that survey. "The Superior Court," "Probate Practice' 'and "Tax Practice" appeared in the August issue. "Personal Injury Practice," "The Regulation of Business" and "Constitutional Law" appeared in the October issue. The series is concluded in this issue with "The Law Student' and "The Lawyer."*

It will be understood that each of these drafts speaks as of the year 2,000. Hence, although they deal with developments during the next fifty years, they do not do so as prophecy but much more reliably as history.

*Of the Los Angeles Bar. For a brief biographical sketch of Mr. Harnagel, see 25 L. A. BAR BULLETIN 386 (Aug. 1950).

regularly attain a state of negligible sensorimotor activity, or in other words, because they aren't sound sleepers.

Most oldtimers are sure that bar examinations had become just about as difficult as possible in the late forties and early fifties, and perhaps they had, but from the academic standpoint only. The introduction in 1960 or thereabouts, of the conditioned examination, and its subsequent development and widespread use, has subjected the law student of this generation to pain and punishment of which his grandfather never dreamed.

The philosophy of the conditioned examination is simplicity itself. It postulates that examinations should not be given *in vacuo,* that is to say in sound-proofed lecture halls where the student is insulated from every distraction. Rather, he should be examined under conditions comparable to those he will encounter in actual practice.

A typical conditioned examination proceeds something as follows. The student is placed in an office and given a job to do and a secretary. We will call her Miss Pothook, and though the name is fictitious it doesn't fit her badly. The job, let us say, is to analyze a proposed 99 year lease, weighing just under a pound, and to dictate an opinion on it which will be comprehensible not only to the examinee but to his client, whose specialty is obstetrics. Three hours are allotted to the job, which might be ample in an ivory tower assuming our hero is well versed in future interests, eminent domain, insurance, mathematics, rights of adjoining landowners, the economics of land use, the new system of municipal land-revenue-in-lieu-income taxes, the old *ad valorem* property tax system, the land sales tax and a few other subjects.

Midway through the first whereas paragraph the 'phone rings. Would he like a new streamlined all-purpose life insurance policy with double indemnity for accidental exposure to flying neutrons? He would not.

He has almost reached the description of the demised premises when the window washer barges in. Our student is only human and the imperturbable manner in which this artisan steps from window ledge to window ledge, snapping and unsnapping his safety belt with careless aplomb, captures first his eye and then his atten-

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CITY ATTORNEYS OF LOS ANGELES

IX

By Leon Thomas David*

JOHN W. SHENK

JOHN W. SHENK is serving his twenty-sixth year as an associate justice of the Supreme Court of California. This is the longest period of service of any of the justices, the next longest being that of Chief Justice William H. Beatty. John Wesley Shenk was born in Vermont, received his schooling in Omaha, Nebraska, and at Ohio Wesleyan University. He left college in his junior year to serve with Company A, 4th Ohio Volunteer Infantry, and saw service in Porto Rico. The Spanish-American war concluded, he was graduated from the law school at the University of Michigan in 1903, and thence came to Los Angeles.[1]

In 1906, he became a deputy city attorney under W. B. Mathews. In 1909, he was promoted assistant city attorney by City Attorney Leslie R. Hewitt, taking the place of Lewis R. Works, who became a judge of the Superior Court and later a Justice of the District Court of Appeal. In 1910, when Leslie Hewitt resigned as city attorney to become special counsel for the Board of Harbor Commissioners, John W. Shenk became city attorney, and held the post until 1913, when he was appointed Judge of the Superior Court.

When Mr. Shenk entered the city attorney's office in 1906, there were three deputies; when he left, there were sixteen. On his staff, and still active on the Bench or at the Bar were Edward R. Young, assistant city attorney, followed in 1912 by George E. Cryer, who later served three terms as the Mayor of Los Angeles. Emmet H. Wilson was his chief deputy, soon to become a judge of the Superior Court, and now a Justice of the District Court of Appeal. Among the other deputies were Howard Robertson; S. B. Robin-

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*Judge of the Municipal Court, Los Angeles; formerly Assistant City Attorney, Los Angeles (1934-1950).

In this article, Judge David has had access to memoranda prepared by Mr. Justice Shenk for use of the city attorney's office.

[1]For further details of the life of this eminent jurist, consult: Workman, *The City That Grew*, p. 243; *California and Californians*, V, p. 339.

His son, John W. Shenk II, is now in practice in Los Angeles with Edward R. Young, with whom Mr. Justice Shenk himself had planned to practice.

son, who remained in the legal division of the city attorney's office for the Department of Water and Power for many years; Jess E. Stephens, who was later city attorney (1921-1929), now Judge of the Superior Court; and Charles E. Haas, now Judge of the Superior Court.

It was during this period that Los Angeles came of age, and the framework of its municipal institutions took form in the fashion we now know them. Certainly, it was a period rich in legal experience, for perhaps in no other incumbency were so many fundamental legal problems first encountered and decided by the courts.

Wilmington and San Pedro were annexed, by virtue of contiguity furnished by the famous "shoestring strip." Time was short and opposition great, and Justice Shenk recalls a midnight trip midst irate farmers and sharp-toothed watchdogs as he hurriedly listed polling places and secured names of election officers for the required ordinance.[2]

Los Angeles was attempting to develop a harbor, and to secure a water supply. The city was expanding, and there was need of new public buildings, parks, and all the other adjuncts of a metropolis.

For years, the basic water supply of the city had been the waters and underground waters appurtenant to the Los Angeles River. By virtue of the pueblo rights of the old Spanish City, Los Angeles claimed these in the entire San Fernando valley. Shenk's major assignment in 1906-1909 was the adjudication of these rights, the city vindicating its claims.[3] At this time, the valley area was undeveloped. Land could be purchased in vicinity of the present city of Burbank for $35 an acre. In 1907, a bond issue of $23,000,000 was voted for the Owens Valley project, and the major attention of the city was thence turned to the Sierra Nevadas in search of adequate water supplies.

While this was a live issue, there was a perplexing "dead" one. The Los Angeles City School District wanted a school site on property used as a cemetery.[4] Unfortunately, the lots had been

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[2]Litigation followed, terminating favorably in People v. City of Los Angeles, 154 Cal. 220 (1908).

[3]As in Los Angeles v. Los Angeles Farming and Milling Company, 152 Cal. 645 (1908); City of Los Angeles v. Hunter, 156 Cal. 603 (1909).

[4]The Old Masonic Cemetery, owned by Los Angeles Lodge No. 42, F. & A. M. The bodies were removed and reinterred, and the site used for an addition to the high school on Ft. Moore hill.

deeded in fee to many who no doubt had long since been interred in their supposedly final resting place. Mr. Shenk persuaded Judge Nathaniel P. Conroy[5] that he had made "due and diligent search" for the owners and could not find them, and hence was entitled to an order for publication of summons.

In 1909, the city was deeply engaged in litigation concerning the validity of tide and submerged land grants in the harbor area. To reach the so-called Miner concession, owned by the Huntington interests whose title was challenged by the city, the Pacific Electric Railway was laying a spur which had to cross First Street in San Pedro. This required a franchise, said Los Angeles. The company speedily replied. Over the Labor Day holiday and week-end it installed the track over the street, relying on the holiday to disperse the judges and thus prevent the granting of an injunction.

But City Attorney Shenk paid the railway back in its own coin. On his advice, the Board of Public Works on the following week-end took horses and equipment to the harbor, removed the railroad's empty cars from the Miner concession, and took possession of the property for the city. The legal burden having passed to the Huntington interests, there was an abandonment of the claims

[5]Afterward, a justice of the California Supreme Court.

made in their behalf. Thus the city took over the site of our present Outer Harbor development.

On October 1, 1910, the Times Building was dynamited, and City Attorney Shenk was called from bed by David M. Carroll, Deputy City Clerk and Minute Clerk of the City Council, asking if a reward could be offered legally for the arrest and conviction of those responsible. The advice was that the city did not have such authority. Later, the charter was amended to authorize the posting of rewards, but the section was repealed. The question arose again, and it was held that the present city government does not have the power to offer rewards in respect to commission of felonies.[6]

To develop the city's electrical system and harbor, the electors voted unprecedented bond issues. Again, the sale depended upon securing an adjudication. Mr. Justice Shenk relates that James G. Scarborough of Scarborough and Bowen came to the rescue with a client who would litigate the validity of these important issues, the Supreme Court having refused to pass upon the question in a mandate proceeding brought for the purpose.[7]

Then, as now, the city was having trouble to secure and maintain an adequate sewer system. A main line sewer was under construction in 1909, to carry effluent to Hyperion and into the Pacific Ocean. In the midst of the operation, the contractor defaulted, the city sued for a forfeiture of $125,000 on his bond. The bondsmen offered to settle for $75,000, which exceeded the expectations of the City Council. After the motion to accept had been carried, a member of the council congratulated City Attorney Shenk, and asked if the city attorney's office was not in need of something. Mr. Shenk replied that the office was in need of an adequate library. The council then authorized the city attorney to procure a good library for the city attorney's office, and this was the beginning of the present working library of that office.

Then there was the Griffith Park case. The Rancho Los Feliz

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[6]Despite Shenk's advice, the council offered the rewards, and in later litigation before amendment of the 1889 charter, it was held the city did not have the power.

In connection with the famous Hickman murder case, the Council again offered a reward. There was a change of administration, and it was not paid, and in City of Los Angeles v. Gurdane, 59 F. (2d) 161, it was held that there was no power under the present charter to offer such a reward.

[7]Los Angeles v. Lelande, 157 Cal. 30 (1909); but later holding the issues valid, after legislative validation: Clark v. Los Angeles, 160 Cal. 30 and 317 (1911).

was granted to Verdugo in 1843 and patented to him by the United States in 1871. It was acquired by Griffith J. Griffith, who deeded a large part of the Rancho to the city for park purposes in 1898. There was considerable controversy when the grant was offered, on the ground that Griffith was attempting to lighten his tax load by unloading the property on the city. While negotiations were pending, the first Monday in March passed. The city cancelled city taxes, but forgot that there were county taxes liened against the property. In 1905, J. H. Smith bought a portion of the rancho, comprising 800 acres in the center of the tract, at the county tax sale for $80 or less. Offer after offer was made to Smith, all of which were refused. In the meantime, the city brought a quiet title action against the tax deed, on the ground the boundaries described did not meet. While an offer of $5000 was pending, the Supreme Court held the tax deed invalid, and the property was saved to the city.[8]

[8]Smith v. City of Los Angeles, 158 Cal. 702. Chief Justice Beatty, who dissented later remarked to City Attorney Shenk that "it was a good thing for you that one member of the court is from Los Angeles. If it had not been for Mr. Justice Shaw you would have lost that Griffith Park case." This was Mr. Justice Lucien Shaw, only member on the court from Southern California from 1903 to 1918.

Much more could be written, and undoubtedly more will be written, about this remarkable city attorney and the remarkable era in which he served the city as such. As a world port, Los Angeles owes much to City Attorney John Wesley Shenk, in whose administration steps were undertaken to perfect the harbor land titles, thus making harbor development possible.[9] Public utility law still reflects the impact of his lawyership.[10] Through his business ability and persuasiveness, citizens underwrote the city so that it might acquire the present central library site, originally for a city hall (then the Normal School site).[11] Water development by Los Angeles was accelerated by the Shenk Act, the Water District Law of 1913;[12] and Mr. Shenk's career as city attorney closed with the annexation of the San Fernando Valley to Los Angeles.

No wonder, after such experiences, that Mr. Justice Shenk of the California Supreme Court today as a jurist is considered one of the foremost American authorities on municipal corporation law.

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[9]Numerous suits were started or pending or carried to completion during the time Mr. Shenk was city attorney, including: San Pedro R. R. Co. v. Hamilton, 161 Cal. 610; People v. Banning Co., 166 Cal. 630; People v. California Fish Co., 166 Cal. 576; People v. Banning Co., 167 Cal. 642; Patton v. Los Angeles, 169 Cal. 521; People v. Southern Pac. R. R. Co., 169 Cal. 537; People v. Banning Co., 169 Cal. 542; Spring Street Co. v. Los Angeles, 170 Cal. 24.

[10]As in Pomona v. Sunset Tel. & Tel. Co., 224 U. S. 330.

[11]The city did not have $600,000 required for the purchase. Mr. Joseph F. Sartori raised the money in a local syndicate, with approval of Senator Rosebeery who organized a corporation and took title. The city purchased the land on installments. How the library was built on the property is another story.

[12]Stats. 1913, p. 1049.

OPINION NO. 175.

NEWSPAPERS: A lawyer may with propriety write articles for publications in which he gives information upon the law; but he should not use a newspaper to advise inquirers in respect to their individual rights or to render opinions to them, even anonymously.

ADVERTISING, DIRECT OR INDIRECT-SOLICITATION OF PROFESSIONAL EMPLOYMENT: A lawyer should not solicit professional employment by either direct or indirect advertisement.

A member of the Bar has asked for our opinion as to the ethics of his writing, gratuitously, a series of short articles of a general nature on legal matters, in a newspaper of general circulation, published and circulated in one of the communities in the Los Angeles area. He states that his name will be used in connection therewith, that he will not answer readers' individual questions; that he contemplates writing from ten to twenty articles, to be entitled, "You and Your Estate," and dealing with such subjects as community property and property held in joint tenancy; and that he was asked to do this by the management of the newspaper in question.

Canon No. 40 of the Canons of Professional Ethics of the American Bar Association states:

"A lawyer may with propriety write articles for publications in which he gives information upon the law; but he should not accept employment from such publications to advise inquirers in respect to their individual rights."

Opinion 162 of the Committee on Professional Ethics and Grievances of the American Bar Association states: "It is not unethical for an attorney to write articles on legal subjects for magazines or newspapers, and the fact that publication is in a trade journal makes no difference. It is unethical for an attorney to allow his name to be carried in a magazine or other publication, representing that he is attorney for a named organization and will furnish free legal advice to its members."

Opinion 270 of the Committee on Professional Ethics and Grievances of the American Bar Association states: "A lawyer may not answer, even anonymously, inquiries for advice as to individual rights through the medium of a newspaper column."

Rule 18 of the Rules of Professional Conduct of the State Bar of California states: "A member of the State Bar shall not advise inquirers or render opinions to them through or in connection with a newspaper, radio or other publicity medium of any kind in respect to their specific legal problems, whether or not such attorney shall be compensated for his services."

The rule stated in Opinion 270 and Rule 18 cited above, is followed in Opinions No. 8 and No. 34 of the Ethics Committee of the Los Angeles Bar Association.

Opinion No. 87 of the Ethics Committee of the Los Angeles Bar Association states in substance that it is not professionally improper for an attorney to write a series of short articles on tax problems for publication in an outlying newspaper owned by a friend of such attorney, provided such articles are not self-laudatory. This opinion quotes from Canon 40 cited above.

Opinion No. 148 of the Ethics Committee of the Los Angeles Bar Association, in an analogous situation, suggests that published articles contain a "cautionary statement," advising the reader to consult counsel of his own selection regarding his individual problems. In this case it is suggested that a statement be attached to the proposed articles stating that they have been prepared by a member of the Bar as a public service for information on legal topics of general public interest; but that no reader should attempt to follow them with reference to his own particular problems without advice of an attorney of his own selection as to the applicability of these rules to a particular problem or set of facts.

It is clear that it is a violation of professional ethics for an attorney to solicit professional employment by either direct or indirect advertisement. To this effect are the letter and spirit of Canon No. 27 of the Canons of Professional Ethics of the American Bar Association and Opinion No. 169 of the Committee on Professional Ethics and Grievances of the American Bar Association and Rule 2 of the Rules of Professional Conduct of the State Bar of California.

Accordingly, it is the opinion of this committee that the pro-

posed articles would be ethically proper under Canon No. 40, provided that they are written within the letter and spirit of Canon 40 and the other rules cited, and suggestion made, herein.

This opinion, like all opinions of this committee, is advisory only (By-Laws, Article VIII, Section 3).

OPINION NO. 176.

BUSINESS ACTIVITIES: A lawyer who is counsel for a real estate brokerage concern, subject to the considerations stated, may properly become a stockholder therein.

A member of the Bar has asked for our opinion as to the professional propriety of his purchasing stock in a real estate brokerage firm for which he is counsel. He states that neither his name nor the name of any member of his firm will appear on the stationery of the concern and further states that the real estate brokerage concern will not engage in unauthorized practice of law as a result of counsel being a stockholder therein.

The problem may logically be divided into two phases: may a lawyer purchase stock in any corporate business activity? and, may he purchase stock in a corporate client? A distinction may further be drawn between a lawyer merely owning an interest in a business, and a lawyer actively participating in a business.

No canon of ethics of the American Bar Association precisely applies to the subject of inquiry. There would appear to be no professional objection to a lawyer participating in corporate activity, through stock ownership; this alone would not constitute the carrying on of business, and stockownership alone would not raise any professional considerations, unless Canon 10, relating to the purchase of interest in the subject matter of the litigation could be said to apply. The facts stated in the inquiry do not raise this consideration.

The inquiry does not reveal the degree of lawyer participation in the corporate activity. The Committee on Professional Ethics of the American Bar Association in Opinion No. 57, points out that a lawyer who engages in business must cautiously consider the conflict between his professional activities and his business activities. In substance that opinion points out that while it is not necessarily improper for a lawyer to engage in business, impropriety arises when the business is of such a nature or is conducted in such a manner as to be inconsistent with the lawyer's duty as a member of the Bar. Such inconsistency may be said to arise when the business is one which will readily lend itself as a means to procuring professional employment, or can be used as

a cloak for indirect solicitation, or his corporate work in the nature such that if handled by a lawyer it would be regarded as the practice of law. It is obvious that a lawyer engaging in the business world faces problems raised by Canon 47, relating to intermediaries; Canon 27, relating to advertising, whether direct or indirect, and Canon 10, relating to the acquiring of interest in litigation.

The Committee on Professional Ethics of the New York County Lawyers' Association has at least twice dealt with this problem (see answers to questions 114 and 179), and this Committee has on prior occasions also expressed itself upon this subject (see Opinions of the Legal Ethics Committee, Los Angeles Bar Association, numbers 16, 84, 98, 120, 140 and 142).

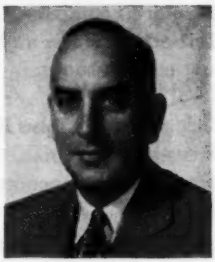
As previously noted there is a vast difference between merely owning an interest in a business, such as is the case of a stockholder or a silent partner, and actively engaging in that business. This Committee does not feel mere ownership of an interest in a firm, whether the lawyer represents that firm or not, would in any way constitute an improper practice on the part of a particular lawyer involved. An attorney engaged in the practice of law should reserve himself for the profession of the law, but it is clear that, should he deem it necessary or wise for him to engage in some form of business or invest in a business, his dealings as a business man in so far as they relate to the conduct of the business itself must be as upright as would be his dealings in his professional capacity. Nothing in the traditions of the Profession would serve to deny a lawyer the right to own or operate a business in addition to his law practice, so long as he observes the standards of the Profession. *A fortiorari* there would appear to be no reason why a lawyer should not own stock in a corporation so long as the same considerations were observed. There is of course no professional consideration which would deny a lawyer the right to represent himself or represent corporate entities of which he is a part owner.

We, therefore, feel that the proposed purchase of stock interest in a real estate brokerage concern by a lawyer who is counsel for that concern, subject to the considerations stated, would not be professionally improper.

This opinion, like all opinions of the Committee, is advisory only (see By-Laws, Article 8, Section 3).

Silver Memories

Compiled from the Daily Journal of November, 1925
By A. Stevens Halsted, Jr., Associate Editor



A. Stevens Halsted, Jr.

CHIEF JUSTICE **Louis W. Myers** of the California Supreme Court will resign his position on the bench, effective January 1st, because of ill health. Judge Myers has had a distinguished 12-year career as a Superior and Supreme Court jurist, and 30 years of work in the law. Former Federal Judge **Benjamin F. Bledsoe,** recent unsuccessful contestant with **George E. Cryer** for Mayor of Los Angeles, is being mentioned as a possible successor. Justice Myers was appointed to his present position to fill the unexpired term of Chief Justice **Curtis D. Wilbur** when he became Secretary of the Navy in the Coolidge cabinet.

* * *

The hopes of many years are being realized with the opening this month of the new building of the U. S. C. School of Law located on University Avenue. Since its inception 21 years ago as a student club formed to exchange ideas on the law, the law school has grown until there are today 335 students enrolled. **Frank M. Porter** has served as Dean since 1904.

* * *

At an Armistice Day celebration, former Secretary of State **Charles Evans Hughes** declared that the chief contribution of the United States lies not in "declarations calling for the outlawry of war," but rather in the exhibition of a temperate disposition on questions affecting international justice, national self-restraint in controversies concerning the United States, and readiness to assist the government in solving dif-

ficult problems. "If any nation on earth can conduct its foreign affairs in a spirit of kindliness, of esteem, of regard for the feelings of others," Hughes said, " it is the United States. Our greatest interest is international friendship."

* * *

Steps toward the establishment of a Municipal Court in Pasadena are under way. **A. L. Rowland,** President of the Pasadena Bar Association for the past four years, reports the movement for this new court has a united backing of the bar and the merchants of Pasadena. A committee composed of **Harold G. Simpson, Leonard L. Riccardi, James H. Howard, Herbert L. Hahn** and **Harold B. Landreth** is investigating the new court proposal.

* * *

Commander **John Rodgers** and the four members of the crew of the naval seaplane PN-9, No. 1, are being feted in California after their spectacular flight from San Francisco to a point near Honolulu, a distance of 1,992 statute miles. This constituted

(Continued on page 119)

Brothers-In-Law

And What They Are Doing in OTHER BAR ASSOCIATIONS

By George Harnagel, Jr., Associate Editor

A two-day "Trial Technique Institute" held in Minneapolis in mid-October under the auspices of the **Minnesota** State Bar Association was attended by what was described as "the largest gathering of trial lawyers ever to assemble in the state of Minnesota."

* * *

The **Columbus** Bar Association and the Columbus Realty Board, after three years of negotiation, have signed a statement of principles governing the activities of lawyers and real estate brokers in real estate transactions.

* * *

The executive committee of the **Cincinnati** Bar Association has voted 8 to 3 against the "socialization of medicine or any other profession."

* * *

The Board of Directors of the **Detroit** Bar Association has appointed a Law Enforcement Committee to cooperate with local police agencies.

* * *

The State Bar of **Texas** has recommended a non-communist oath as a requisite to a license to practice law.

* * *

The State Bar of **Michigan** recently secured a consent decree enjoining a bank from practicing law.

* * *

The 1950 report of the Committee on Federal Practice and Procedure of the **Oregon** State Bar is critical of pre-trial conference procedure as imposed upon attorneys and litigants in the United States District Court for that state. The committee took a particularly dim view of the practice of presenting all documentary evidence at pre-trial with the conse-

(Continued on page 120)

PRESIDENT'S PAGE

(Continued from page 82)

and all of his Directors. Mr. Kurland furnished his services and the refreshments consumed at cost.

Catalina Trip for the Ladies:

This function which was well attended was in charge of Sharp Whitmore and his wife, Frances. H. M. Ahern, General Agent of the Catalina Island Company, and his staff were especially cooperative throughout.

Golf Tournament:

The golf tournament was in charge of William G. Robertson and was an unqualified success. We are indebted to the beautiful Los Angeles Country Club for the use of their facilities and, in addition, to William Yost of the Club who extended every assistance.

Annual Banquet:

If the general cocktail party was the best in the history of the State Bar, I think the same can be said for the annual banquet held Friday night, October 6.

General arrangements for this affair were in charge of Lawrence J. Larson. He, together with George W. Cohen, was largely responsible for its success. Mr. Cohen was entirely re-

sponsible for the appearance of Danny Kaye. Mr. Kaye and his accompanist, Sam Prager, "made" the party. They are entitled to our unqualified thanks.

Free Tickets to Radio and Television Shows:

The procuring and distribution of these tickets was in charge of John P. Pollock. He had able assistance at all times from Donn Tatum. We are particularly grateful for the cooperation of Columbia Broadcasting System, National Broadcasting Company, American Broadcasting Company, and Mutual Don Lee for making available to our members and guests tickets to their radio and television shows.

Transportation:

William B. Cleves arranged for the transportation of our ladies to the Fashion Show and for many persons to and from Hollywood Park.

The Lawyers Wives of California, Inc., a newly established organization, maintained an information booth in the Galleria of the Biltmore Hotel throughout the Convention. In addition, they served as hostesses at the fashion show, the general cocktail party, and the trip to Catalina. Much credit is due them for their untiring efforts.

As always our Executive Secretary, Lou Elkins, and his staff were on the job at all times rendering superlative service.

In connection with the costs of the general cocktail party, we received financial and other assistance and are greatly indebted to the following organizations:

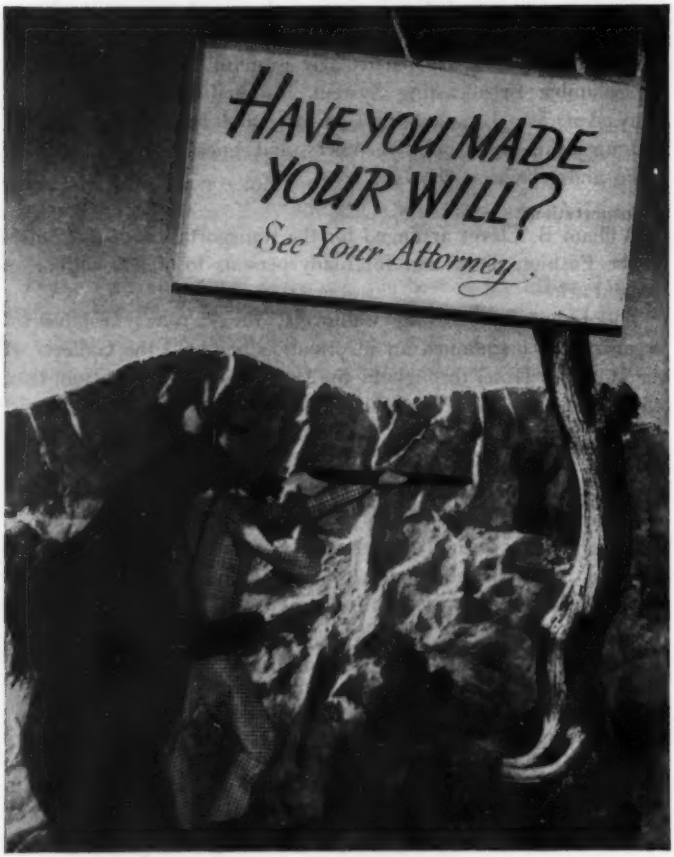
Beverly Hills Bar Association
Burbank Bar Association
Inglewood-Couth Bay Bar Association
Kern County Bar Association
Lawyers Club of Los Angeles
Long Beach Bar Association
Orange County Bar Association
Pomona Valley Bar Association
San Diego Bar Association
San Gabriel Valley Bar Association
Santa Barbara County Bar Association
Ventura County Bar Association
Whittier Bar Association

This recital would not be complete without reference to the Los Angeles Daily Journal and its genial Editor, Elmer Cain. The coverage of the Convention and the general cooperation of the Journal can best be described as outstanding.

Again our thanks to all.

DANA LATHAM.

★ **THIS POSTER** is seen daily by thousands of persons who pass the windows of the Union Bank at 8th and Hill. This special three-dimensional poster, as well as others in the main lobby, the elevators and in the Safe Deposit Department, remind trust prospects to "see your attorney"—"have him help you prepare your will"—and "see that it is kept up-to-date."



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WATER RIGHTS

(Continued from page 84)

As among appropriators, the first in time is the first in right,[10] but when the proper conditions exist, appropriative rights may become absolute by the running of the prescriptive period.[11] Prescription, however, with respect to underground waters, cannot run until there is an overdraft upon the source of supply, that is to say, unless and until the average annual replenishment is less than the annual take of water from the basin.[12] This is for the reason that as long as there is a surplus of water in the basin, any person may appropriate and use such surplus without interfering with the overlying owners or his prior appropriators.[13] However, as noted in the *Pasadena* case, where a condition of overdraft arises and the various producers produce the water under a claim of right and adversely to the others, the production of each becomes adverse to the production of all other producers and if continued for five years prescriptive rights arise.[14] If curtailment is required for the protection of the basin, the producers are required to reduce their production proportionately to the end that the annual production will not exceed the safe yield or average annual replenishment of the basin.[15]

THE PLEADINGS

With this brief outline of the nature of the several rights which may be involved in an adjudication (and of course there has been no attempt to enumerate the various factors which may limit the generality of the foregoing rules), we may turn our attention to the matter of pleading. As noted, both the overlying right and the riparian right is part and parcel of the land to which it is appurtenant, and therefore in pleading the riparian right, the riparian property should be described, and also the fact that the stream crosses the property or that the property borders upon the stream should be alleged; and in pleading the overlying right, the property overlying the source of supply should be described, and

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[10]Civil Code, Sec. 1414; *Pasadena v. Alhambra, supra,* 33 Cal. (2d) p. 926.

[11]*Horst Co. v. Tarr Mining Co.,* 174 Cal. 430, 437-8, 163 P. 492; *Morgan v. Walker,* 217 Cal. 607, 615, 20 P. (2d) 660.

[12]*Pasadena v. Alhambra, supra,* 33 Cal. (2d) p. 926.

[13]*Katz v. Walkinshaw,* 141 Cal. 116, 135, 70 P. 663.

[14]33 Cal. (2d) pp. 928-932.

[15]33 Cal. (2d) p. 933.

the fact that it overlies the same source of supply to which the other parties make claim should likewise be alleged.[16]

It might be noted here that, while many entities such as cities, mutual water companies, districts, and public and private corporations produce water and sell it to others for use upon either riparian or overlying lands, such producers do not exercise the riparian or overlying rights of their customers, but are appropriators and gain only such rights as they may acquire under their appropriation or through prescription.[17] Overlying and riparian owners, however, may by contract authorize such entities to exercise their overlying or riparian rights and deliver them the water to which they are entitled thereunder, but this situation is the exception and not the rule.[18]

With respect to appropriative rights, as they are not appurtenant to any particular property nor a part or parcel thereof, as is the case with respect to overlying and riparian rights, one need plead only that he is the owner of the right to take a certain amount of water from the source of supply. In support of such a general allegation, any evidence pertinent to the title or right of the party may be introduced whether such ownership was acquired by deed, appropriation, prescription or any other lawful means.[19]

While there is no direct authority upon the matter, in view of the fact that the court held in the *Pasadena* case that the overlying owner either protected his right by use or gained a right in the nature of a prescriptive right, it is probable that in cases involving overdrawn basins where the overdraft and claimed production have existed for the prescriptive period, a similar general allegation of ownership might suffice if accompanied with allegations with respect to hostile and adverse use, or if the pleading

[16] *Silver Creek etc. Co. v. Hayes*, 113 Cal. 142, 144, 145, 45 P. 191.
While there appears to be authority for the proposition that the amount of water used by the owner of property to which the right attaches must be alleged *(Montecito etc. Co. v. Santa Barbara*, 151 Cal. 377, 90 P. 935), this seems inconsistent with the rule that a riparian or overlying right is not dependent upon use nor lost by non-use and embraces future as well as present reasonable beneficial needs *(Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist., supra*, 3 Cal. (2d) pp. 525, 530-531; Weil: Water Rights in the Western States, 3rd Edition, p. 929), and the present practice is for the court to find the amounts required by the owner for present reasonable beneficial use but reserve jurisdiction to modify the judgment so as to provide for future riparian or overlying requirements (3 Cal. (2d) p. 525).

[17] *San Bernardino v. Riverside, supra*, 186 Cal. pp. 26, 31; *Consolidated etc. Co. v. Foothill Ditch Co.*, 205 Cal. 54, 63, 64.

[18] *Copeland v. Fairview etc. Co.*, 165 Cal. 148, 152, 163, 167, 131 P. 119; *Stratton v. Railroad Commission*, 186 Cal. 119, 121-123, 198 P. 1051.

[19] *Wright v. Best*, 19 Cal. (2d) 368, 377, 121 P. (2d) 702; *McKinley Bros. v. McCauley*, 215 Cal. 229, 233, 9 P. (2d) 298 (complaints); *Garbarino v. Noce*, 181 Cal. 125, 127, 183 P. 532 (answer).

(Continued on page 106)

be an answer, by pleading the appropriate statute of limitations.[20]

Any number of producers from a common source of supply may join as plaintiffs in seeking an injunction to protect the supply.[21] As noted, it is necessary, in order to secure a satisfactory solution of underground water problems, to have adjudicated the rights of all substantial producers from the common source of supply. Of course, it is often impossible to serve or to make every producer or claimant a party. In the *Pasadena* case all substantial producers were parties, but non-parties produced about 2% of the supply. It is advisable to have as parties as many producers as possible because if any substantial production is not controlled by the judgment, the effectiveness of the restraints imposed by the decree in protecting the supply would be substantially impaired. This, however, is a practical matter, and the mere fact that some producers are not made parties does not affect the validity of the decree.[22]

As may be appreciated, the complete adjudication of the water rights in a basin is a matter of some magnitude. In the *Pasadena* case the area was highly urbanized, and most of the people in the area were served through private or public utilities or mutual water companies, although there were several parties producing water for use on their overlying land. There were 28 parties to that case and these 28 produced all except 2% of the water involved. In the *West Basin* case,[23] however, quite extensive farming areas are involved as well as numerous industries and a number of cities. In that case there are approximately 500 parties. It would be quite impracticable and also extremely expensive to proceed in cases of this magnitude with each party employing engineers and securing and presenting engineering and other expert evidence. The practice followed in the *Pasadena* case and peculiarly applicable to similar situations is the reference procedure provided by the Water Code.[24]

---

[20]The judgment which was affirmed in that case found merely the quantity of water each party owned without describing the land upon which an overlying use had been made. This was because the trial court followed the theory of mutual prescription, and if the rights were prescriptive, the place of use became immaterial. (See Water Code, Section 1706, *San Bernardino v. Riverside, supra*, 186 Cal. p. 28, 29).

[21]*Consolidated Peoples Ditch Co. v. Foothill Ditch Co.*, 205 Cal. 54, 59, 269 P. 915; *Barton v. Riverside*, 155 Cal. 509, 513, 101 P. 790; C. C. P., Section 378.

[22]*Pasadena v. Alhambra, supra*, 33 Cal. (2d) pp. 919, 920.

[23]*California Water Service Co. et al. v. Compton et al.*, Los Angeles Superior Court No. 506,806.

[24]Water Code, Sections 2000-2050 (formerly Section 24 of the Water Commission Act), 33 Cal. (2d) pp. 916-919.

STATUTORY ADJUDICATION PROCEDURE

With respect to stream adjudications the proceedings may be initiated by the Division of Water Resources,[25] under which procedure the producers and claimants are given notice by publication[26] and also by mail so far as they are known.[27] They file their claims with the Division and a hearing is had thereon.[28] The Division makes the necessary investigation and study[29] and makes its determination of the rights of the parties[30] and files its report and determination with the Superior Court.[31] The parties may file exceptions to the report,[32] and the matter is then heard by the court[33] and a decree entered.[34] In such court proceedings any party may introduce evidence in support of his contentions or to overcome the facts as determined by the Division in its report.[35] This procedure is not available with respect to underground sources of water supply.[36].

THE COURT REFERENCE PROCEDURE

Both stream supplies and underground supplies may be adjudicated by the filing of an appropriate action in the Superior Court for a determination of the respective rights of the parties and for an injunction to restrict the production of the parties in accordance with their rights as determined and also such further restrictions as may be required to protect the source of supply from depletion. Such cases may proceed to trial in the ordinary way,[37] or the court, either upon its own motion or upon motion of any party, may in its discretion refer the case to the Division of Water Resources either generally for a determination of all issues or specifically for the determination of any particular fact or facts.[38] The latter procedure was the one utilized in the *Pasadena* and *West Basin* cases. As it was felt that the reference should be restricted to the ascertainment of facts rather than to have it general, which might involve the determination of questions of

[25]Water Code, Section 2525.
[26]Water Code, Sections 2526-2528, 2575-2577.
[27]Water Code, Section 2578.
[28]Water Code, Sections 2600-2659.
[29]Water Code, Sections 2550-2554, 2625.
[30]Water Code, Sections 2700-2703.
[31]Water Code, Section 2750.
[32]Water Code, Section 2757.
[33]Water Code, Sections 2763-2767.
[34]Water Code, Sections 2768-2769.
[35]Water Code, Sections 2764, 2767, See *Bray v. Superior Court*, 92 Cal. App. 428, 434-435, 268 P. 374.
[36]Water Code, Section 2500.
[37]*Allen v. California Water and Telephone Co.*, 29 Cal. (2d) 467, 469, 488, 489, 176 P. (2d) 8. The trial court has now ordered a reference with respect to the matters reserved for further hearing by the Supreme Court, including possible physical solutions, 29 Cal. (2d) p. 491.
[38]Water Code, Sections 2000-2001.

law,[39] the orders in each case set forth the scope of the investigation. However, both references are quite general with respect to the ascertainment of all the physical facts involved, including the geology and hydrology of the area; the production and service areas of the various producers; the nature and extent of the overdraft, if any; and any recommendations the referee may have with respect to a possible solution of the problems involved.[40] Judge Collier in the *Pasadena* case recommended that the engineers of the parties cooperate with the Division with respect to the investigation and in the development of the various factors involved therein, and most parties, either individually or through the organization of groups, did so, so that when the report was filed there was no substantial exception thereto made by any party except one, who, incidentally, had no engineer working with the Division with respect to the report. A similar practice has been followed with respect to the reference in the *West Basin* case and also in the reference made for the determination of certain reserved questions in the *Allen* case.[41] In this manner the parties are able to keep fully advised of the work being done by the Division and the nature and scope of its investigation, and oftentimes the conferences of the engineering group result in substantial aid to the Division.

The Division, after it completes its investigation, prepares a draft of its report, covering the matters referred to it by the court.[42] This draft is then served upon all parties,[43] and the parties may, within 30 days after the time of service, file objections thereto with the Division.[44] The Division then considers these objections, and it may amend its report in response thereto, either with or without hearings. When it has fully considered the matters, it then prepares its final report, and this is filed with the court and notice of filing is served upon all parties.[45] The parties have 30 days within which to file exceptions thereto with the court.[46] However, unless a similar objection has been filed with the Division, the court need not consider the exception.[47] The report of the Division becomes *prima facie* evidence of the facts therein con-

[39]Water Code, Sections 2011, 2012.
[40]A good description of a report by the Division is found in *Fleming v. Bennett*, 18 Cal. (2d) 518, 525, 526, 116 P. (2d) 442.
[41]See Note 37 *supra*.
[42]Water Code, Section 2013.
[43]Water Code, Section 2014.
[44]Water Code, Section 2015.
[45]Water Code, Section 2016.
[46]Water Code, Section 2017.
[47]Water Code, Section 2018; *Pasadena v. Alhambra*, *supra*, 33 Cal. (2d) p. 935.

tained.[48] The trial of the case then becomes a trial upon the exceptions filed by the various parties, and the parties filing such exceptions are entitled to a full and complete hearing thereon and may introduce evidence to contradict or overcome those portions of the report to which objection has been made.[49] Thereafter the court makes its findings of fact and conclusions of law and enters its judgment as in the ordinary case.

One of the principal benefits of the reference procedure is that a single agency ascertains and accumulates all of the basic data involved such as logs of wells, production and power records, crop and use information, and the like, and it becomes unnecessary for the engineers of the several parties to individually accumulate and secure the information. This basic data is then available to all parties and their engineers, and any witness not agreeing with the conclusions the referee may have reached with respect to any of the various factors involved still has available this basic data upon which to predicate his opinion with respect to such factors.

The Water Code provides that the referee shall apportion the expense,[50] and the cost of the reference is usually allocated among the parties upon the basis of their production, usually with a minimum amount payable by every party. Thus the small producers, without too great expense, have available all of the information which, were the case to be tried in the usual way, they likely would not be able to obtain because of the expense involved.

In the *Pasadena* case, the trial court made an order, upon an application of the referee for instructions, that the rights of the parties should be determined *inter se*, that is, each as against each and all other parties. The Supreme Court approved this practice and held that it was unnecessary, when such an order was made, for the various parties to cross-complain against all other parties or for the defendants to serve their pleadings upon other defendants.[51] The writer believes that without such an order, such an *inter se* adjudication may be made because in an action to quiet title (and an action to adjudicate water rights is essentially an action to quiet title), where the various parties plead that they own the property, or an interest therein, they are required to prove affirmatively their rights, and if the proof submitted shows a right inferior to the rights of one of the other claimants, it merely means

[48]Water Code, Section 2019.
[49]Water Code, Section 2019.
[50]Water Code, Section 2043.
[51]33 Cal. (2d) p. 919.

that the party has failed to prove the ownership claimed. It has therefore been held that the rights of the various defendants as among themselves can be determined upon the basis of answers without the necessity of filing cross-complaints.[52] It is also true that in a quiet title action it is the duty of the court, without the service of cross pleadings, to adjudicate the entire question of title of the various parties before it in accordance with the evidence submitted and to award each litigant judgment for such interest as the evidence may show to be vested in him.[53] The practice in adjudication actions where a reference has been made is to apply to the court for an order similar to that made in the *Pasadena* case and thus eliminate all possible questions.

THE DECREE

The court should, in its decree, retain jurisdiction to meet future problems and changing conditions such as a change in safe yield, the forfeiture or abandonment of rights,[54] changes in the needs of riparian or overlying owners where such priorities are involved,[55] changes in supply as affected by the use of others or the operation of works controlled by others, and the like.[56] The court may also appoint a watermaster to enforce the judgment, and the Division is authorized to act as such.[57] If it acts as watermaster, the state pays one-half of the cost of the watermaster service.[58]

CONCLUSION

The foregoing gives only a birds-eye picture of pleading and practice in cases involving water rights and, of course, does not attempt to pursue the several subjects discussed into their various ramifications. It must be appreciated that the general rules stated in their application to particular facts are subject to various limitations and may involve the application of other doctrines affecting rights to water, which have not been, and from the nature of things could not be, discussed in an article of this length. It is hoped this article and the authorities cited may provide some aid to the lawyer whose client becomes involved in an action seeking the adjudication of rights to water.

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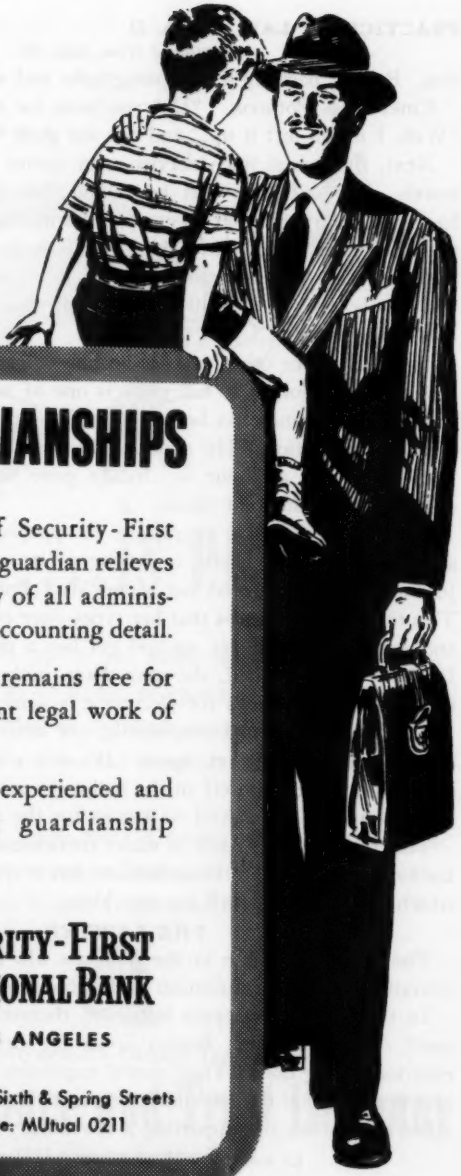
[52] *Miller v. Thompson*, 139 Cal. 643, 645, 73 P. 583.
[53] *Milton E. Giles and Co. v. Bank of America*, 47 Cal. App. (2d) 315, 323, 117 P. (2d) 943; *Strong v. Shatto*, 201 Cal. 555, 558, 258 P. 71. See also *Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist., supra*, 3 Cal. (2d) pp. 524-525.
[54] *Pasadena v. Alhambra, supra*, 33 Cal. (2d) pp. 936, 937.
[55] *Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist., supra*, 3 Cal. (2d) p. 525.
[56] *Allen v. California Water & Telephone Co., supra*, 29 Cal. (2d) p. 491.
[57] Water Code, Sections 4400-4407; *Allen v. California Water & Telephone Co., supra*, 29 Cal. (2d) pp. 489-490.
[58] Water Code, Section 4405.



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PRACTICE OF LAW 2000 A. D.

(Continued from page 86)

tion. Result: back up a few paragraphs and start over again.

Enter Miss Pothook. "Did you buzz for me?" No, he didn't. "Well, I musta left it up," and out she goes.

Next, the genial linen service man comes in with some clean towels. His wife has just had twins, but his whole family is hardly an interruption at all compared with the man from the telephone company who follows him. He is testing the line for something or other and is in and out five times in ten minutes. Unfortunately, the 'phone still works despite his ministrations, and it rings once more.

The lady at the other end of the line is having trouble with her cook and (we forgot to tell you) is one of several "clients" with which our examinee has been equipped for purposes of the conditioned examination. He appeases her in fifteen minutes or so, notes that half an hour is already gone and jumps from the description to the rent clause.

After two pages of appraisals, re-appraisals, percentages and arbitrators the rent clause is getting pretty complicated, but he's just about got it figured out when Miss Pothook bobs in again. This time she announces that her typewriter is still skipping letters and will he please hurry up and get her a new one. Dobbins & Dobbins down the hall, she says, have junked all their old-fashioned electric machines for electronic lap-size linotypes . . .

This crisis postponed temporarily, our hero returns to the attack as the 'phone rings yet again. It's his wife this time. Little Willie has locked himself in the bathroom and swallowed the key. What shall she do? And so it goes for the full three hours.

This routine lends itself to many refinements and variations and the Committee on Bar Examinations has a system of bonuses with which it rewards its staff for new ideas.

THE LAWYER

The greatest change in the lawyer's life has come in the improvement and mechanization of the tools of his trade.

In the old days lawyers burdened themselves with shelf after shelf of books which flowed from the printing presses in an ever-increasing flood. They rented expensive space to house them and thanked God they wouldn't be practicing law fifty years hence when the burden of supporting a law library would be intolerable.

(Continued on page 114)

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They might as well have saved their sympathy for themselves. As we all know, law books are now largely a thing of the past. Ultramicrofilming has been the answer to both the problems of space and of expense. Corpus Juris Tertium, instead of taking up thirty feet of shelf room and weighing one hundred fifty pounds or more comes in a set of three thin reels, each five inches in diameter and weighing just under one pound in all. The California Reports and California Reports, Second Series, are each available in a reel of similar size. California Reports, Third Series, have never been produced in book form, but are available in daily rushes, which replace the old advance sheets, and in annual reels. These will be spliced together from year to year until the standard five inch reel is full, and then California Reports, Fourth Series, will be started.

An ultramicrofilm wall or table viewer is found in every lawyer's office, and there are batteries of them in every law library. Simple controls instantaneously produce the image of any page desired and the viewers can be set on automatic, so that the film passes through them at any desired reading speed, or they can be operated manually. Inasmuch as the viewers produce a type image substantially larger than the type used in the old-fashioned book, eyestrain long ago ceased to be an occupational ailment of the lawyer and law student.

International Business Machines Corporation, in conjunction with Shepard's Citator, put on the market some years ago a mechanical Shepardizer. It followed the old punched card system and is in wide use. Recently IBM introduced an entirely new model which utilizes the principle of the revolutionary electronomnemonic analyzer and printer. Some of the larger offices are beginning to use it and all of them say they don't see how they ever got along without it.

This same company, it is repoted, will shortly bring out an attachment which will enable the machines on the market not only to find pertinent authorities but to organize them automatically into a simple brief. It is rumored that this is just the beginning and that what IBM is really working on is a machine into which legal problems are fed at one end and opinions come out at the other. Mathematicians, they remind us, have had similar devices for over fifty years. It has been estimated that one of these ma-

chines will be able to do the work of 150 judges and that they will require only three or four mechanically minded jurists to service them.

Not long after midcentury one of the ordinary practitioner's greatest problems arose from the multiplicity of branch courts. The course of this development in Los Angeles has been traced in another chapter. The problems of venue, jurisdiction and procedure were troublesome enough, but that of the lawyer's personal logistics was much worse. How to cover a half dozen branches, say, on a busy law and motion morning was a problem which required careful routing and split-second timing. Happily that day is now gone. The multiple-televisor interexchange system permits the lawyer in most cities to take care of all law and motion arguments, and many probate and appellate matters as well, without leaving his office, or his easy chair for that matter. (The rule requiring counsel to stand when addressing the court has generally been relaxed as far as televised appearances are concerned.) The Supreme Court of the United States has not yet countenanced televised arguments, but most of the younger judges favor the system and it is bound to come sooner or later.

It is doubtful, however, if mechanization will ever fully oust the lawyer's secretary. It is true that dictating devices of all sorts have been greatly improved, but no one has yet produced a machine of reasonable size and cost which will not only take dictation but transcribe it. The vagaries of our spelling, where the same sound may be represented by as many as eight different combinations of letters, not to mention regional and individual differences in accent and inflection, pose problems which have not yet been solved. It is true that M.I.T. has constructed at government expense a reciprocating audio-graphic bridge capable of turning the spoken word into the printed page and vice versa, but it is a maze of vacuum tube and electrical relays which occupies an area of an acre or more, still has plenty of bugs in it and operates smoothly only on a Harvard accent. For the time being, at least, the legal secretary's job seems more secure than that of the judge. Even if a portable and inexpensive audio-graphic bridge should be perfected, she will still be needed to open the windows when they should be closed, to turn on the heat when it should be off, and to tell the public that the boss is out when he should be in (and, sometimes, when he is).

In other chapters we have touched on the private lawyer's economic status. The story of how he lost the income tax business has been told, as well as his vicissitudes in the probate and personal injury fields. One big threat right now is the public civil counselor system.

It all began in the Small Claims Courts. Everybody, including the private lawyer, thought they were a good thing at first. They started out in most places with a jurisdictional limit of $50. This went up to $100 and then by easy stages in various parts of the country to from $2,000 to $5,000. Of course litigants aren't supposed to be represented by counsel in these courts, and as the jurisdictional limit increased and the problems got steadily a little more complicated, the judges had too much work to do.

First, a commissioner was added to each court. His job was to talk to the parties at a pre-trial conference and try to make some rhyme or reason out of the dispute before it was presented to the judge. Then it was felt unwise to have the same commissioner deal with both parties, so we had plaintiffs' commissioners and defendants' commissioners. These worthies are now on the

point of becoming advocates, not just investigators, with the result that the litigants in so-called Small Claims Courts will not only have counsel, but *public* counsel. No one saw much harm in the public defender system (for the prosecutor was always provided by the public), or even in the public administrator and public guardian systems in their early stages. But this new system of public counsel for private litigants in civil litigation carries the seeds of the socialization of the entire bar.

One final word about the position of the private lawyer today. He is perhaps the last refuge of rugged individualism. He makes his own living by the sweat of his cerebrum and the shine of the seat of his pants and he likes to do things in his own way. While he has profited greatly by the regimentation of others, for that has meant much employment of one kind and another for him, he doesn't like being regimented himself. Most lawyers even like to work at their profession and they objected most strenuously when the National Twenty Hour Work Week Act was applied to them. Severe measures had to be used to bring them into line. For one thing all pleadings presented for filing in most jurisdictions must bear an attorney's affidavit reading like this:

"COUNTY OF .....)
) s.*
STATE OF.....)

I, JOHN DOE BLACKSTONE, being first duly sworn, depose and say:

That the within and foregoing instrument and all drafts, outlines, notes and memoranda, if any, upon which it is based (whether graphic, sonic, visual or electronic) were in their entirety prepared in strict compliance with the terms of the National Twenty Hour Work Week Act; and further that I did no work upon them, or any of them, and that I did not (and that I did not cause or permit any other person to) think, cogitate, worry or reflect upon them, or any of them, or upon any of the problems, difficulties, questions or other matters to which they relate or refer, or upon which they are based, except during the working hours permitted by said Act, to-wit, between 10 A. M. and noon and between 1 P. M. and 4 P. M. on Monday, Tuesday, Wednesday and Thursday, excluding, however, such of said days as constituted, or immediately preceded or immediately fol-

*The Great Uniform Procedural Reform Act of 1990 provided that the second "s" might be omitted without invalidating an affidavit.

> lowed, a national holiday or any day generally observed in this jurisdiction as a day of relaxing, rejoicing or recuperating.
>
> JOHN DOE BLACKSTONE."

Similar affidavits must be annexed to all deeds, contracts and other legal documents. It has not yet been definitely decided in many jurisdictions whether an instrument lacking such an affidavit is void or merely voidable.

It is known, however, that many private lawyers are somewhat lax in their observance of the Act's requirements. In some parts of the country this tendency has become so widespread that it is reminiscent of conditions that prevailed during the prohibition era—in fact it has become known in some areas as "law-legging" and in others as "bootlawing." In certain parts of the South the lawyer who engages in the illicit practice of the law is commonly referred to as a "moonshine mouthpiece."

The lawyer was once among our most law-abiding citizens, but now we have the spectacle of the lawyer become outlaw through devotion to his professional duties. Few laymen can be found who sympathize with his predicament although it is due largely to his zeal in extricating them from theirs. Those who do have a kind word for him are, it must be admitted, crackpot reactionaries who are trying to disinter the long-forgotten shibboleth: "That government is best which governs least."

Fortunately most sensible people do not regard the lawyer today as dangerous. The common opinion is that he is just a plain damn fool who works too hard for what he gets and charges too much for doing it. There is, however, a growing body of critics who do not take such a tolerant attitude. They feel that his weakness for work could be indulged as a professional peccadillo as long as it affected nobody but himself, but they think it has now become an antisocial tendency fraught with dire consequences for the public weal.* The lawyer's intemperate industry, they fear, will corrupt the youth of the land, while his diligence debauches the fabric of our *lazy-fare* society and subverts the very foundations of our twenty-first century civilization.

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*Were they lawyers themselves they could turn against him that ancient and vacuous maxim which he himself has used when out of better ammunition: *"Sic utere tuo ut alienum non laedas."*

SILVER MEMORIES

(Continued from page 98)

a new world's record for a non-stop flight by a seaplane. They were brought back from the Islands on board the Battleship Idaho.

* * *

California's Diamond Jubilee, celebrating the seventy-fifth anniversary of statehood, began with a costume ball in San Francisco, followed by parades and sporting events. At the opening ball, dons replaced sheiks, and senoritas banished flappers. The guitar and the castanet crowded out the saxophone. By a special cable circuit, a notable electric achievement was accomplished in making plainly audible to the audience the chimes of Big Ben on the Parliament Buildings in London.

* * *

Prophesying that the use of the airplane will become general, like the automobile, when the public demand comes for it, **Henry Ford** asserted that as soon as planes can be used profitably commercially, they will become more common in use. He believes that the airplane of the future will be a combination of dirigible, heavier-than-air plane, and helicopter.

* * *

Declaring that there are so many City ordinances and amendments, many of which are out-of-date, that it is impossible to determine just what is the law in Los Angeles, attorneys **Fred Shelley** and **Julian A. Richardson** have asked the City Council to give them the task of codifying the municipal laws. The task will require two years time, the suggested fee $25,000.

* * *

Otto Gerth, who has been City Attorney of Maywood, has resigned to enter private practice. He will be succeeded by **Gordon Gale.**

* * *

Direct air mail service between Los Angeles and Salt Lake, via Las Vegas, will be inaugurated on January first by Western Air Express, Inc. Seven Douglas planes are being built for this run, capable of making 145 miles per hour. A number of Ford all-metal planes may also be purchased. Under the contract schedule, the planes will carry mail and express up to 1,000 pounds daily, and will take seven hours for the trip.

BROTHERS-IN-LAW

(Continued from page 99)

quent elimination of surprise. "Surprise," it says, "is frequently an effective means of ascertaining the truth."

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The **Wisconsin** Bar Association not only publishes a monthly magazine but periodically issues "The Wisbar News Letter." Something of an innovation in bar association journalism, it provides a current information service to member lawyers on a wide variety of subjects of interest to them.

* * *

This department could keep pretty busy just following the activities of the **Illinois** Bar Association. It seems to be one of the liveliest in the country. Among a wide variety of activities it recently published:

. . . a fat roster of all the attorneys in the state.

. . . a pamphlet on the Supreme Court building at Springfield, which is distributed as a public relations feature to building visitors.

. . . as a supplement to its monthly Journal, a series of lectures on "Drafting Legal Documents" delivered by its members at a practice course for lawyers sponsored by the College of Law of the University of Illinois in conjunction with the Association's annual meeting,

and advised its members that its Springfield office "is fully staffed to handle your State House errands."

* * *

The 1950 Conference of the **National Association of Referees in Bankruptcy** was held in Tulsa in October. The quarterly Journal of this Association is a lively and optimistic publication whose only anxiety about the upturn in the business of the bankruptcy courts seems to be a mild apprehension that, with the abrupt reduction in the number of referees following the transition from the fee to the salary system in 1947, the remaining referees may be overworked and underpaid.